

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

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DATE: December 7, 2000

TO: Orange County Zoning Administrator

FROM: Planning and Development Services Department/Current Planning Services Division

SUBJECT: Public Hearing on Planning Application PA00-0098 for Use Permit

PROPOSAL: The applicant is requesting a Use Permit, to legitimize existing block walls and attached fireplace in the side yard setback area in excess of the standard permitted height. The combined height of two walls separated at ground level but attached at the foundation is up to 12' on the applicant's side, and 6' on the neighbor's side. The height of the fireplace including metal flue would be several inches more than that. The Zoning Code standard height for a wall in these setback areas of the property would be 8 feet to the applicant, and 6 feet to the neighbor. The Zoning Code standard for the fireplace, with its 0' setback off the property line, would be up to 8' in height.

LOCATION: In the Lemon Heights area at 11348 Murray Lane, Santa Ana. Third Supervisorial District.

APPLICANT: Ted Habing

STAFF J. Alfred Swanek, Project Manager E-mail: Swanekj@pdsd.ca.orange.ca.us
CONTACT: Phone: (714) 834-2626 FAX: (714) 834-4772

SYNOPSIS: Current Planning Services Division recommends Zoning Administrator approval of PA00-0098 for Use Permit subject to the attached Findings and Conditions of Approval.

BACKGROUND:

The subject site is developed with a single-family dwelling. A combination of walls exceeding 6' in height and attached at the foundation, as well as an attached fireplace on the side property line, was constructed without all necessary permits. According to the applicant's letter of justification, the owner and the most affected neighbor state the wall generally replaces an older existing wood fence. Both agree to the project and this application.

SURROUNDING LAND USE:

The subject site and all surrounding properties are zoned 125-E4 (20000) "Small Estates". The subject site and surrounding sites are developed with single family dwellings.

REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to appropriate County Divisions. As of the writing of this staff report, no comments raising substantial issues with the project have been received. In response to the public notice, Mrs. Vanderwerff at 11322 Skyline expressed by phone concern that a fireplace at a property line with the flue extending above the wall might represent a fire hazard. Staff notes that an outdoor fireplace up to 12' tall may currently be built 3' off the property line without a use permit or fire department review of the plans.

CEQA COMPLIANCE:

The proposed project is Categorical Exempt (Class 11, construction or placement of accessory structures) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

DISCUSSION/ANALYSIS:

The existing but unpermitted walls are a replacement of an older wooden fence. A Use Permit is required for the proposed 12 foot height of the two walls combined at their foundations replacement fence. The walls will nonetheless appear to be 6 feet high from the neighbor's side, as required by the Zoning Code. The 12' tall fireplace (plus perhaps 1' for a metal flue) on the property line (0' from the property line) is also permissible with a Use Permit. Special findings of compatibility are required.

These are:

That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.

That the location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

Staff concludes the Zoning Administrator is able to make these fence and wall findings contained in Appendix A, because the wall is an internal property line wall, practically affecting only two parties, both of whom consent to its height and design, and this application. No sight distance problems are involved.

RECOMMENDED ACTION:

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA00-0098 for Use Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Charles Shoemaker, Chief
CPSD/Site Planning Section

APPENDICES:

- A. Recommended Findings
- B. Recommended Conditions of Approval

EXHIBITS:

- 1. Applicant's Letter of Explanation
- 2. Site Plans and site photos

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana.

Appendix A
Findings
PA000098

1	GENERAL PLAN	PA000098	
That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law.			
2	ZONING	PA000098	
That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code, or specific plan regulations applicable to the property.			
3	COMPATIBILITY	PA000098	
That the location, size, design and operating characteristics of the proposed use will not create unusual noise, traffic or other conditions or situations that may be objectionable, detrimental, or incompatible with other permitted uses in the vicinity.			
4	GENERAL WELFARE	PA000098	
That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.			
5	PUBLIC FACILITIES	PA000098	
That the approval of the permit application is in compliance with Codified Ordinance Section 7-9-711 regarding public facilities (fire station, library, sheriff, etc.).			
6	CATEGORICALLY EXEMPT	PA000098	(Custom)
That the proposed project is Categorically Exempt (Class 11) from the provisions of CEQA.			
7	FENCE AND WALL 1	PA000098	
That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.			
8	FENCE AND WALL 2	PA000098	
That the location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.			

Appendix B

Conditions of Approval

PA000098

Z01	1	CP	CP	BASIC/ZONING REG	PA000098
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This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

Z02	2	CP	CP	BASIC/TIME LIMIT	PA000098
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This approval is valid for a period of 24 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.

Z03	3	CP	CP	BASIC/PRECISE PLAN	PA000098
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Except as otherwise provided herein, this permit is approved as a precise plan. After any application has been approved, if changes are proposed regarding the location or alteration of any use or structure, a changed plan may be submitted to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

Z04	4	CP	CP	BASIC/COMPLIANCE	PA000098
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Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

Z05	5	CP	NA	BASIC/OBLIGATIONS	PA000098
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Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant will reimburse the County for any court costs and attorneys fees which the county may be required to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition.

Z06	6	CP	NA	BASIC/APPEAL EXACTIONS	PA000098
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Pursuant to Government Code Section 66020, the applicant is informed that the 90-day period in which the applicant may protest the fees, dedications, reservation or other extraction imposed on this project through the conditions of approval has begun.